IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

WRIT PETITION NO.962 OF 2007

Pawan Dilip Thakur .. Petitioner.
Versus
State of Maharashtra & Ors. .. Respondents.

Mr.R.K. Mendadkar for the petitioner.
Mr.Niranjan pandit, AGP for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 13TH AUGUST, 2007.

P.C. :

1. Rule. Heard forthwith. Heard learned counsel for the parties.

2. In the instant case, petitioner claimed as belonging to Thakur tribe which is recognised as scheduled tribe. The Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati by its order dated 31st January, 2007 found that the petitioner was not in a position to establish his affinity to Thakur Scheduled tribe and consequently rejected the petitioners claim. It is this order which is the subject matter of the present petition.

3. At the hearing of this petition, on behalf of the petitioner, learned counsel submits as under : i) he contends that the petitioner produced documentary evidence in the form of caste validity certificate of his close blood relatives and this

has not been properly appreciated by the Committee; ii) It is next contended that merely because the father of the petitioner was unable to answer some questions as to tribal traits and characteristics, though he had answered other relevant questions, could not have resulted in the Committee rejecting the entire evidence, considering the test of preponderance of evidence which a Civil Court has to apply and consequently the Committee, a quasi judicial body.

4. We have heard learned counsel for the petitioner. Insofar as issue pertaining to his blood relatives being granted tribe certificate, we find that the Committee has addressed itself to that issue in its findings recorded under reason (I). The Committee noted that considering the law declared by the Supreme Court, case of each person must be considered independently. In our opinion merely because a blood relatives was issued a Caste Validity Certificate would not mean on the strength of the said certificate, the applicant on proving that the person is a blood relative, his claim must be accepted. This would be to general a proposition. At the highest, the said certificate would be evidence to be considered. The evidentiary value of Caste Validity Certificate would be stronger in a case of father or other sibling.

This, however, will always be subject to other evidence which has been brought on record and which was not available when the case of the person holding the caste/tribe validity certificate was considered. If there is other evidence which has come on record and which will have the effect of negating a presumption arising out of such a certificate, the Committee would be within its jurisdiction not to rely on such evidence. In our opinion, therefore, it cannot be said that the Committee misdirected itself in law in applying the test which it has applied. What the Committee must examine is the evidence on record. In the instant case the Committee has so considered and recorded a finding of fact.

5. Insofar as tribe Thakur is concerned, after the Judgment of the Supreme Court in Parmar's case, in our opinion, the law will have to be considered on the touchstone of that said judgment. Thakkar and/or Thakur are names found not only amongst scheduled tribe, but also found amongst other backward classes as also forward castes. Merely because a person claims as belonging to Thakur S.T. based on his surname and the documents produced to that effect, by itself is not sufficient and the applicant in such a case must show the affinity of such a person to Thakur S.T. based on tribal traits

and characteristics. In our opinion, in cases when the surname is prevalent amongst backward castes, forward caste, and/or scheduled tribes and others, the real and correct test would be the affinity test.

6. The Petitioner was given an opportunity to lead evidence. Petitioner has led his evidence. The report of the vigilance enquiry was made available to the Petitioner. The enquiry report and the Petitioner's explanation has been considered by the Committee. We find that the Committee has noted the statement recorded of the father of the Petitioner. It is set out therein that the petitioner's father could not state anything about his clan and/or gotra; he could not state anything about customs and traditions found in Thakur S.T. The father also could not state anything about traditional dances of the tribe. The contention advanced is that the father had correctly answered some of the questions of tribal traits. In our opinion, if the important traits and characteristics were not established to satisfy his affinity to the Thakur S.T. that must be held against the claimant; that he could not discharge the burden cast upon him. Considering what has been stated by the Supreme Court in Madhuri Patil's, it is impossible for a person belonging to a scheduled tribe to

forget his original tribal traits and characteristics and customs. The research officer after examining the report of the vigilance officer has held that the petitioner could not establish that he belongs to Thakur S.T.

6. Considering the above, in our opinion, we do not find that the order of the Committee suffers from any error of law apparent on the face of record or failure to exercise jurisdiction, warranting interference under our extra ordinary jurisdiction.

7. No interference is called for. The petition is dismissed.

8. The learned counsel for the petitioner seeks stay of the impugned order passed by the Committee. In our opinion, no case is made out for grant of stay and as also as there was no interim order during the pendency of the petition, Application for stay rejected.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)